BOROUGH OF FORTY FORT

ORDINANCE 3 OF 2025

BE IT ENACTED AND ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF FORTY FORT, LUZERNE COUNTY, PENNSYLVANIA, AND IT IS HEREBY ENACTED AND ORDAINED BY AUTHORITY OF THE SAME, AS FOLLOWS:

ARTICLE I

SHADE TREE COMMISSION; TREE REGULATIONS

§ 25-101. Commission Created.

There is hereby created a Commission to be known and designated as the "Shade Tree Commission of the Borough of Forty Fort, Pennsylvania."

§ 25-102. Commission Membership.

Said Commission shall consist of five residents of the Borough of Forty Fort. The Borough Council shall appoint one person for a term of three years, two members for a term of four years, and two members for a term of five years. Upon the expiration of any term, a successor shall be appointed, or the member whose term has expired shall be reappointed, to serve for a term of five years. In the event of a vacancy occurring during any term, such vacancy shall be filled by Council for the then- remaining portion of the unexpired term. Shade Tree Commission members shall serve without compensation. Three members of the Commission shall constitute a quorum. The Commission may organize, selecting a Chairman or other officers deemed necessary.

§ 25-103. Powers and Duties of Commission.

1. The Shade Tree Commission shall have custody and control of the shade trees on the public streets and highways of the Borough of Forty Fort (hereinafter referred to as "shade trees") and is authorized to plant, remove, maintain and protect such shade trees. The Commission, if it so desires, may delegate the issuance of permits required under the regulations contained herein to the Zoning Officer of the Borough or their designee.
2. The duties of the Commission shall be as follows:
    A. To study the problems and determine the needs of the Borough regarding shade trees on the public streets;
    B. To recommend to property owners and the Borough Council the type and size of trees to be planted upon the Borough streets or parts thereof, as designated.
    C. To assist the Borough Council and Borough officials in the dissemination of news and information regarding the selection, planting and maintenance of trees upon the streets

and to make such recommendations from time to time to the Borough Council as to desirable legislation concerning the shade tree program and activities for the Borough.

D. To conduct regular and special public meetings at which the subject of shade trees may be discussed by the members of the Commission, officers and personnel of the Borough and all others interested in the shade tree program.

E. To annually report to the Borough Council the transactions and expenses of the Commission for the previous fiscal year; To publish notice whenever said Commission proposes to plant, transplant or remove shade trees on any street or highway, and notice of the time and place of the meeting at which such work is to be considered shall be given in one newspaper of general circulation in Forty Fort once per week for two weeks immediately preceding the time of the meeting. The notice shall specify, in detail, the streets or portions upon which trees are proposed to be so planted, replanted or removed; and

3. The Commission shall meet and organize by the annual election of Chairperson. The said Commission shall then provide for the holding of regular and special meetings as said Commission shall deem advisable and necessary in order to perform the duties set forth.

4. The Commission may employ and pay such necessary assistants as the proper performance of the duties devolving upon it, shall require and enforce regulations for the care and protection of the shade trees of the Borough. No such regulation shall be enforced until it has been approved by the Borough Council and enacted as an ordinance.

§ 25-104. Definitions.

As used in this Part, the following terms shall have the meanings indicated:
ANSI — American National Standards Institute.

BOROUGH—The Borough of Forty Fort

HAZARDOUS BRANCHES — Any dead, diseased, structurally defective, broken or mutilated branches or parts of trees which are in a state of decomposition and pose a threat to public safety.

HAZARDOUS TREES — Any dead, diseased, structurally defective, broken or mutilated trees or parts of trees which are in a state of decomposition and pose a threat to public safety.

LARGE TREES — Designated as those attaining a height of 40 feet or more at maturity.

MEDIUM TREES — Those attaining a height of 35 feet to 50 feet at maturity.

NATURALLY GROWING TREES — Trees that grow from natural succession (from a parent tree, without human interference) in the right-of-way.

PERMIT — A document issued in writing by the Shade Tree Commission or its designee granting permission to plant, prune, remove or sever roots. The fee for the issuance of such permits shall be established, from time to time, by resolution of the Borough Council.

PERSON — An individual, firm, partnership, association, corporation, company, or organization.

PRUNING — The proper removal of tree branches back to a branch collar or parent branch. No more than 25% of live crown shall be removed at any one pruning. Pruning should adhere to the most-recent edition of ANSI A300: Pruning Standards Tree, Shrub and Other Woody

Plant Maintenance - Standard Practices.

SHADE TREE COMMISSION — The body that has jurisdiction over all shade trees.

SHADE TREE or STREET TREE — Any planted tree located within the right-of-way of the public streets and highways of the Borough. "Shade tree" ("street tree") does not include trees growing naturally within the Borough rights-of-way.

SMALL TREES — Designated as those attaining a height of 25 feet to 30 feet at maturity.

STREET or HIGHWAY — The entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular and pedestrian traffic.

TREE — A large perennial plant, usually with one main trunk and many branches, but may also have multiple trunks.

TREE LAWN — That part of the street or highway right-of-way adjacent to developed property, not covered by sidewalk or other paving, lying between the sidewalk and that portion of the street or highway used for vehicular traffic.

TREE TOPPING — The drastic removal or cutting back of large branches to stubs, which leads to decay, disease, weak limbs, starvation and tree death. Topping is also referred to as "heading," "stubbing," "dehorning," "rounding-over" or "tipping."

§ 25-105. Permit Required; Application; Conditions.

1. The application for any permit required shall be made, in writing, to the Borough Zoning Officer, or their designee, upon forms furnished by them and shall specify the particular kind of work or operation the applicant desires to perform and shall state the exact location and species of any tree or trees affected. The Zoning Officer shall promptly review every application received. The Zoning Officer may refer any application to the Borough Engineer or the Director of Public Works for their opinions on such application. In addition, the Zoning Officer may, if they deem it necessary, refer any application to the Shade Tree Commission established herein for its decision on the application. The permit, when issued, shall be effective for such length of time as the Commission shall determine, which shall be indicated on the permit, and such permit may be revoked at any time at the direction of the Commission upon proof satisfactory to the Commission that the terms and conditions upon which the permit has been issued are or have been violated. The Commission may, at its discretion, as a condition to the issuance of a permit, require the applicant to file a bond satisfactory to the Commission or to deposit securities satisfactory to guarantee the compliance by the applicant with the terms and conditions upon which the permit is issued.

2. Permit Required. It shall be unlawful for any person, without first obtaining a permit, to cut, prune, break, climb with spurs, injure in any manner or remove any shade tree, to cut down or interfere in any way with the main roots of any shade tree, to spray with any chemicals or insecticides any tree, to place any rope, guy wire, cable, signs, posters or other fixtures on a tree or tree guard, or to injure, misuse or remove any device placed to protect shade trees, except in case of immediate necessity for protection of life or property.

§ 25-106. Duties and Responsibilities of Property Owners.

A. It is the duty and responsibility of the property owner abutting streets and highways in the Borough to properly maintain any street trees within tree lawns adjoining the property, including watering, pruning, mulching, fertilizing, and weeding. Property owners shall maintain trees and other vegetation in the right-of-way and maintain tree lawns in a manner so as not to create a safety or liability problem for motorists, pedestrian traffic or other activities within the right-of-way.

B. Where circumstances permit, it is the duty and responsibility of the property owner to plant a shade tree or shade trees, if none exist(s) (see § 25-116). Tree planting shall follow the requirements detailed elsewhere in this Part. (see §§ 25-117, 25-118 and 25-119).

C. Tree lawns shall consist of only trees, natural grass, and landscaping materials. Mulch placed around trees shall not exceed twice the diameter of the tree. Landscape lighting and sprinklers may be installed but must be located in a manner that will not create a hazard for pedestrians. Other landscaping materials must not create a hazard to vehicle or pedestrian traffic. Garbage and recycling containers may be placed on tree lawns in accordance with § 10-504 (QOL-13). Signs shall not be placed on tree lawns.

D. Tree lawns and tree roots shall be preserved during sidewalk renovation, replacement or repair.

2. All trees and other vegetation within the Borough right-of-way must be pruned or trimmed in a manner to allow for full visibility of street signage and the minimum required site distance.

3. The cost of pruning, planting, or removing any shade trees and stumps within a public right-of-way in the Borough shall be the responsibility of the owner of the property abutting the tree. In addition, the cost of necessary suitable guards, curbing or grading for the protection thereof, and the replacement of any pavement, driveway or sidewalk necessarily disturbed in the execution of such work, shall also be paid by the owner of the real estate abutting the location of the work done.

§ 25-107. Cutting and Removal of Trees.

1. The Shade Tree Commission may, upon 30 days' written notice, require a property owner to cut and remove trees afflicted with any disease deemed a hazard due to structural defects, or infested with any insect or other organism that threatens to injure or destroy such shade trees, in the interest of safety or to conform with the regulations of this Part. Upon failing to comply with such notice, the Borough may undertake the work to be done and collect the costs thereof from the owner of the property.

2. Criteria for removal of any tree shall include:

A. An analysis by a Shade Tree Commission member in which he or she concludes that the tree is diseased and dying, or damaged beyond recovery of health, or poses a threat to property or safety because of dying.

B. A condition for permission to remove a tree is that, unless the Commission says in writing otherwise, the tree shall be replanted on the same lot, and within the right-of-way of the same lot in which the tree was removed. Replacements must be planted in accordance with this Part §§ 25-116 through 25-120).

C. When permission is granted for tree removal, the tree stump must be ground out or cut below ground level.

3. Removal by the property owner of non-diseased trees, trees in poor health or in decline, or those not infested by insects or other organisms, shall not be permitted unless, in the judgment of the Shade Tree Commission, one or more of the following criteria exist:

   A. A tree will sustain substantial damage due to the installation or repair of underground utilities where no other alternative, such as tunneling, sleeving, or relocation, exists;

   B. A tree is causing traffic safety problems and pruning, or other less-invasive techniques would not eliminate the problem; and/or

   C. The maintenance of overhead utilities would require that a tree be severely pruned, resulting in the removal of 2/3 or more of the crown, thereby causing irreparable damage to the tree.

4. In an emergency where a tree poses an immediate threat to health, property or safety, the Director of Public Works may order the removal of a tree by the Borough. Property owners shall be responsible for the removal of the stump. Prior to the removal of the tree, the Director of Public Works shall make written findings setting forth how the tree poses an immediate threat to health or safety in view of the above criteria. Prior to removal of the tree, the Director of Public Works shall notify the property owner.

5. Tree removal shall be carried out in accordance with the safety standards outlined in the most-recent edition of ANSI Z133.1 (Safety Requirements for Pruning, Trimming, Repairing, Maintenance, Removing Trees and Cutting Brush).

§ 25-108. Manner of Pruning.

1. No person, corporation or public utility may remove, prune or alter a shade tree along Borough streets or roads without a permit issued upon application to the Shade Tree Commission. The permit shall specify the address or blocks where any such tree maintenance activity shall be undertaken. (See § 25-105, Permit Required; Application; Conditions.

2. All pruning of shade trees and naturally growing trees along Borough streets and roads shall conform to the most recent edition of ANSI A300: Pruning Standards - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices. A copy of this standard is on file at the Borough Building. Thus, in Forty Fort as in the ANSI standards, topping is prohibited. Improper pruning is subject to fines to the property owner (see § 25-111, unnecessary Harm to Trees Prohibited, and § 25-126, Penalty).

3. All work must conform to the most recent edition of ANSI Z133.1: Safety Requirements for Pruning, Trimming, Repairing, Maintenance, Removing Trees and Cutting Brush. A

copy of this standard is filed at the Borough Building.

4. Whenever, in order to take down or prune any shade tree in the public highway or having branches extended over the public highway, it shall be deemed necessary to remove any wire or wires, every person having any such wires running through a public highway shall immediately notify the public utility company of his intention in order that service may not be interrupted.

§ 25-109. Clearance of Trees Over Sidewalks and Streets.

1. All branches of shade trees shall be kept trimmed in a manner to maintain a minimum height of 14 feet where they overhang any public street and eight feet where they overhang a sidewalk. However, the Commission reserves the right to designate a higher clearance on certain streets and highways where heavy traffic or other conditions make it expedient. All shade trees standing on private property and having branches overhanging sidewalks or streets shall also be kept pruned by the owner, so the lowest branches are in compliance with this section.

2. In the event the property owner neglects or refuses to maintain trees at the prescribed level within the time specified as notified in writing, the Borough may undertake the work to be done at the owner's expense, in the same manner as otherwise specified in this Part.

§ 25-110. Removal of Fallen Trees and Parts of Trees.

In the event a shade tree or its parts are felled by storm or other accident, the portion of the tree on the street or road shall be removed from the cartway of the street by the Borough, without charge. Property owners shall be responsible for any other removal or cleanup.

§ 25-111. Unnecessary Harm to Trees Prohibited.

1. No person shall break, injure, mutilate, top, kill or destroy any shade tree or set fire to or permit fire to burn any shade tree.

2. Permanent fixtures and punctures to a shade tree are prohibited. No person shall attach, or permit to be attached, any cables, ropes, wires, nails, spikes or other injurious fasteners to any shade tree.

3. No person shall allow any toxic chemicals, salt water, oil, gasoline or other materials, which are hazardous or injurious to plant life, to empty, drain, or seep onto any shade trees or their root systems or in such a way as to injure any shade tree.

4. No person shall excavate any ditches, tunnels, holes or trenches, or lay any driveway, or deposit or store within the root protection zone (roughly the perimeter of the tree's outer branches) of any shade tree, or maintain any asphalt, concrete, stone or any other impervious material which may impede the free passage or air, water and fertilizer to the roots of any shade tree, without first obtaining a permit. In the event of imminent danger to life or property, digging near a shade tree may be undertaken without permission of the Commission, provided that such action must be reported to the Commission and a permit placed on file within 48 hours of its occurrence.

5. No person shall injure, misuse, or remove any device placed to protect shade trees, except in case of immediate necessity for protection of life or property or in consultation with the Shade Tree Commission, or its designee.

§ 25-112. Repair or Replacement of Damaged Trees.

In the event a shade tree is damaged, the Borough shall charge for repairs or replacement, or make a charge for the appraised value of the tree, against the person responsible for the damage to said

tree. Damage is to be repaired immediately at no expense to, and to the satisfaction of, the Shade Tree Commission. If the Shade Tree Commission determines that the damage warrants removal, the cost of tree and stump removal and the planting of replacement trees will be paid by the person or entity that caused such damage. Failure to comply shall cause such work to be completed by the Borough and billed to the person or entity that caused such damage. If damage resulted in removal or death of the tree, the Borough may require replacement trees whose combined diameter is equal to that of the tree removed. All replacement trees shall meet the planting requirements for shade trees. In addition to costs for repair or replacement, the Borough may also impose penalties as provided for in § 25-126 (Penalty).

§ 25-113. Removal of Tree Stumps.

After removal of a tree, the remaining stump shall be removed within 30 days, to a point not less than six inches below the grade of the surrounding area. If a replacement tree is to be planted at the same location, the stump will be removed to accommodate the replacement tree.

§ 25-114. Hazardous Shade Trees and Branches.

Where hazardous shade trees or branches overhang the cartway of a street or otherwise exist within the right-of-way, the Borough may cause them to be removed at the expense of the abutting property owner so as to maintain public safety within the right-of-way. In the event of an emergency or hazardous situation, the Director of Public Works or the Shade Tree Commission may require them to be removed within 24 hours.

§ 25-115. Requirements to Plant Trees.

1. As a condition to any permit to remove any shade tree, the Borough or the Shade Tree Commission may require that the permittee plant, at its own expense, another tree in place of the one removed, and in such case, direct the type, size, and location of the tree to be planted and the season within which the work shall be done. In such cases, a deposit, in an amount set by resolution of Borough Council shall be required. Such deposit will be returned to the applicant if an approved tree is planted within 1 year of the date of the permit.

2. Trees shall be added to the public right-of-way in areas where an inventory of street trees has identified a need for trees, or wherever the Commission determines a need.

3. Street trees shall be required whenever a proposed subdivision shall average three or more

lots per gross acre, or where the proposed subdivision is adjacent to any existing or recorded development having street trees (other requirements of the Borough's Subdivision and Land Development Ordinance as regards trees are applicable).

§ 25-116. Location and Spacing of Trees.

1. Spacing between newly planted shade trees, unless otherwise stated in writing by the Shade Tree Commission, shall not be less than 25 nor more than 40 feet, with some variation with the species of tree(s) being planted. Whenever practicable, trees shall be planted at least 20 feet from intersections. Shade trees shall be planted at least 12 feet from a light standard, six feet from a utility pole, six feet from a fire hydrant, and 20 feet from a stop sign.
2. In areas where a tree lawn exists, the setback for tree planting shall be at a point halfway between the curb and sidewalk. However, no tree shall be planted in a tree lawn within 20 feet of the near edge of the curb of an intersecting street.
3. Where no curbing exists, the setback for tree planting shall be eight feet from the center of the drainage swale; and the setback shall be eight feet from the edge of the cartway. However, no tree shall be planted within 20 feet of the near edge of the cartway of an intersecting street.

§ 25-117. Specifications for Selection and Planting New Trees.

1. Size. All replacement trees shall be at least six feet in height and measure at least 1 1/2 inches in caliper, which is diameter measured at a point six inches above planting level.
2. Quality. Only plant material grown in nurseries shall be procured for shade tree planting. Either balled and burlapped or bare root material is acceptable. All replacement trees shall conform to the most-recent edition of ANSI-Z60 American Nursery Standards, with particular attention to appropriate (large) root ball size on balled and burlapped stock.
3. Timing. Replacement trees shall be delivered and planted between April 1 and May 15 or September 30 and November 15.
4. Tree Species.
   A. The Shade Tree Commission shall maintain a periodically revised list of tree species approved for planting as shade trees. The Commission may specify which species are appropriate to certain locations. (See addendum for acceptable tree species).[3]
   B. Tree species selections for shade trees must be made from the current list of approved species and in consultation with the Commission. As not all trees on this list will be suitable for all situations, suitability will be determined by the Shade Tree Commission or its designee.
   C. The use of any tree other than those listed above under the preferred sections requires approval by the Commission.

§ 25-118. Planting Under Existing Utility Lines.

The Commission shall give due consideration to the prevention of interference by the shade tree with existing overhead and underground utility fixtures. Trees planted under wires or utility

lines shall be appropriate to the height and pruning requirements imposed by the presence of the existing wires or lines.

§ 25-119. Root Zone Controls.

The Commission may, in some cases, require root control devices or material to minimize the effect of root growth on sidewalks, curbs or underground utilities. The need and type of control shall be prescribed by the Commission, where necessary.

§ 25-120. Maintenance of Newly Planted Trees.

1. Watering. New trees shall be given 10 to 20 gallons of water weekly from the time of planting until frost and weekly throughout the first complete growing season. In this area, rain almost never provides sufficient water, and as a general rule deep watering must be done rain or shine. Additional watering of young trees will be needed during periods of drought.
2. Mulching. New trees should be properly mulched to protect against mower damage, from competing weeds, and water evaporation. Mulch shall not make contact with the trunk of the tree.
3. Stakes, guys, or tree wraps. Except in high-traffic areas where vandalism is a possibility, staking is generally not necessary. Stakes or guys shall be removed no later than one year after staking. Tree wraps shall be removed upon planting.

§ 25-121. Borough Maintenance.

After a written, mailed, and/or delivered notice of violation, the Borough, in its sole discretion, shall have the authority to plant, prune, remove or otherwise maintain any shade trees at its expense, at the expense of the affected property owner, or a combination of both, if the property owner should fail to comply with a written notice of violation.

§ 25-122. Tree Maintenance Contractors.

1. All trimming and pruning of shade trees and naturally growing trees along Borough streets and roads shall conform to the most-recent edition of ANSI A300: Pruning Standards - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices. All work must also conform to the most recent edition of ANSI Z133.1 (Safety Requirements for Pruning, Trimming, Repairing, Maintenance, Removing Trees and Cutting Brush). Copies of both standards (ANSI A300 and ANSI Z133.1) are on file at the Borough Building.
2. All tree maintenance contractors who prune, remove or otherwise maintain trees located within the Borough rights-of-way shall possess general liability insurance coverage with a policy limit of not less than $500,000 for each occurrence. The permittee is required to supply evidence of such insurance to the Borough prior to starting work.

§ 25-123. Deviation from Strict Compliance.

The Shade Tree Commission shall have the power, in appropriate cases, to permit deviations from

the strict compliance with this Part whenever, due to special circumstances, literal enforcement of this Part would be impossible, impractical or not in the best interest of the Borough.

§ 25-124. Collection of Costs for Work Done by Borough.

Payment of costs for work done by the Borough shall be due and payable 30 days after proper invoice by the Borough to the property owner. If the property owner does not make payment within 30 days, there shall be considered a lien against the property. Any such lien may be collected by an action in assumpsit or by the filing of a lien in the manner provided by law for the filing and collection of municipal claims.

§ 25-125. Enforcement.

The provisions of this Part shall be enforced by the Borough of Forty Fort Code Enforcement Office and Shade Tree Commission.

§ 25-126. Penalty.

Any person, firm or corporation violating any provision of this Part shall be fined a maximum of $1000 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. This section shall not limit any other remedies and criminal sanctions provided in law or equity.

§ 25-127. Appeals.

Any person aggrieved by any action or decision of the Commission may appeal to the Commission at its next public meeting. Alternatively, or subsequently, any person aggrieved by any action or decision of the Commission may appeal to the Borough Council by filing an appeal within 30 days from the action or decision appealed from on forms to be supplied by the Borough Secretary or their designee. The fee for filing such an appeal shall be the fee established, from time to time, for code appeals by resolution of the Council of the Borough of Forty Fort.

§ 25-128. Municipal Immunity and Nonliability for Damages.

1. In addition to all other immunity existing at law or in equity, nothing contained in this Part shall create an obligation or duty upon the Borough. No pedestrian, passenger, driver, owner of property or any person claiming an interest otherwise affected by the provisions of this Part shall have any claim against the Borough for failure to perform any duty or for performance in a negligent manner.
2. This Part shall not be construed to hold the Borough of Forty Fort, the Borough Council, the Mayor, the Shade Tree Commission, or any of their respective officers, employees or their appointed agents (collectively referred to as "municipal parties") responsible for any damages, injuries, loss or death to person, persons or property by reason of any activity, omission or commission, or act by municipal parties authorized herein or otherwise arising under this Part. The approval of any tree of type of tree shall not constitute a representation, guaranty or warranty of any kind or nature by the municipal parties and shall create no liability upon, or a cause of action against, the municipal parties for any damage or loss.

§ 25-129. Severability.

If any of the provisions of this Part, or the application of any provisions hereof, shall be held invalid, such invalidity shall not affect or impair the remainder of this Part, it being the intention of Borough Council that such remainder shall continue in full force and effect.

§ 25-130. Repealer.

All ordinances or parts thereof which are inconsistent with this Part, are hereby repealed to the extent of such inconsistency.

ADOPTED, ENACTED AND ORDAINED by the Council of Forty Fort Borough at a regular meeting duly held on this 7th day of April, 2025.

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Michele Pascarella, Secretary Thomas J. Murray, III, Council President

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Mayor Brian Thomas